IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 14756 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANILKUMAR MAGANLAL NAYAK
Versus
STATE OF GUJARAT AND ANOTHER

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Appearance :
Mr H.R.Prajapati for the petitioner

Mr Krunal Pandya, Assistant Government Pleader for the respondents

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CORAM : HONOURABLE MR.JUSTICE AKSHAY H.MEHTA

Date : 25/04/2007

ORAL JUDGMENT:

Rule. Mr Krunal Pandya, learned Assistant Government Pleader waives service of Rule for the respondents.

By filing this petition the petitioner prays that the orders dated 24th February 2005 and 19th April 2005 passed by respondent Nos.2 and 1 respectively be quashed and set aside. By these orders, the concerned authorities have turned down the request of the petitioner for allotment of fair-price shop, which was formerly allotted to his deceased brother.

It is the case of the petitioner that his brother was allotted fair-price shop since the year 1986. He was unmarried and was residing with the family of the petitioner. The petitioner also maintained the family from the income derived from this shop. He helped his brother in running the shop. The brother of the petitioner expired on 13.11.2004. In view of the same, the petitioner submitted an application dated 15.1.2005 along with all relevant documents to the District Supply Officer, Valsad with a request to transfer the shop in his name. However, his request was rejected by the concerned authority by order dated 24th February 2005. The ground on which the application was rejected was that the petitioner was not direct descendant of the deceased allottee of the shop and, therefore, by virtue of Resolutions dated 2.8.2004 and 5.3.2004 he was not eligible to have the licence of his deceased brother. By way of interim arrangement the authority i.e., the Mamlatdar, Pardi vide order dated 17.11.2004 transferred all the ration cards attached to the shop of the deceased to another fair-price shop by

Against the order of rejection, the petitioner preferred appeal on 7th March 2005 to respondent No.1. It is the say of the petitioner that without affording any opportunity of hearing to the petitioner, the appellate authority by order dated 19th April 2005 rejected the appeal.

In view of the same, the petitioner has now approached this Court by way of this petition.

I have heard Mr H.R.Prajapati, learned advocate for the petitioner and Mr Krunal Pandya, learned Assistant Government Pleader for the respondents. It is submitted by Mr Prajapati that the reason for dismissing the application of the petitioner is not legal and it is based on incorrect facts. According to him, the respondents have rejected the application because there were two separate ration cards held by the petitioner as well as by his deceased brother and they could not be treated as a family members residing together. It is the submission of Mr Prajapati that the ration cards were separate, however, it was only for the purpose of obtaining some more quota of kerosene for domestic use, otherwise, both the brothers stayed together.

As against that, Mr Krunal Pandya, learned AGP has tried to support the decision of the respondents and has submitted that since there were two separate ration cards, it cannot be said that the petitioner and his deceased brother stayed in one family. He has also submitted that the brother of the deceased does not fall in the direct line of descendants of the deceased licence holder. Therefore also he is not entitled to have the shop in his name.

I have carefully considered the submissions of the learned advocates for the parties. I have also carefully gone through the record of this petition. The allotment of fair-price shop is made under the Pandit Din Dayal Grahak Bhandar Yojana. To supply essential commodities to remote rural areas the State Government has passed Resolution dated 21.8.2004 whereby the provisions with regard to allotment of shops, distribution of grains, etc. have been incorporated in

the Scheme. In Section 2 definitions have been prescribed. Clause 2.13 deals with the definition of family. Clause 2.13.2 states for considering the eligibility of a candidate for allotment of fair price shop, father, mother, brother, sister, etc. will be considered as members of one family. Here there is no dispute that the brother of the petitioner was a bachelor and he did not have his own family as such i.e. wife and children. According to the petitioner, he stayed with the petitioner's family and both the brothers ran the shop and earned the livelihood for the family. There is no dispute that there were two ration cards, one in the name of the petitioner and the other in the name of deceased brother. However, the petitioner has given adequate explanation that this was done only with a view to obtain certain quota of kerosene for domestic purpose. Apart from that, both the brothers stayed together under the same roof and had the meals from the same kitchen. The other side is not able to effectively controvert this fact by producing on record any authentic material. It may also be seen here that there is yet another brother of the petitioner who is staying separately. He also holds ration card. But so far as the address given in the ration card is concerned, the address mentioned in the ration card of the petitioner as well as of his deceased brother is the same whereas the address of the third brother as stated in his ration card, is different. It also appears that the shop was the only source of income to both the brothers. In view of the same, the authority ought to have considered the request of the petitioner favourably, more particularly when the third brother, namely, Hardshadbhai Maganlal Naik by filing the affidavit dated 25.2.2005 had declared that he have no objection if the shop was allotted to the petitioner.

For the aforesaid reasons, the impugned orders are quashed and set aside. The respondents are directed to allot the licence to hold the fair-price shop formerly run by the deceased brother of the petitioner,

namely, Suresh Maganlal Naik to the petitioner. The petition is allowed. Rule is made absolute with no order as to costs.

(Akshay H Mehta, J.)

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